

STAFF REPORT

CONSIDERATION OF A RESOLUTION REQUIRING PAYMENT OF \$50,000 AS DESCRIBED BY THE STIPULATED JUDGMENT

for

MA-RU HOLDING COMPANY, INC. AND BONZI SANITATION LANDFILL STANISLAUS COUNTY

Background

Ma-Ru Holding Company, Inc. and Bonzi Sanitation Landfill (hereafter jointly referred to as “Discharger”) own and operate the Bonzi Sanitation Landfill, in Modesto California. The facility is on a 128-acre parcel near the Tuolumne River, and has been in operation since the late 1960’s. The majority of the landfill is not constructed to today’s standards, and a portion of the wastes are in contact with the shallow groundwater. None of the four waste management units were constructed with a bottom liner or a leachate collection and recovery system, as is required of modern landfills. The landfill has created a plume of groundwater pollution, which must be contained and treated through a groundwater extraction and treatment system.

The facility is regulated under two separate waste discharge requirements. WDRs Order No. 98-093 prescribes requirements for the four waste management units (only one of which is currently active), and includes requirements to fully close the inactive units, as well as post closure maintenance, monitoring, and corrective action requirements. The corrective action measures include both the groundwater pump and treat system and a landfill gas collection system.

Waste Discharge Requirements (WDRs) Order No. 90-215 prescribes requirements for the discharge of treated groundwater and storm water to a twelve million gallon surface impoundment. The WDRs specify that water from this surface impoundment maybe discharged to the adjacent vineyard, and provides flow rates, discharge specifications, and monitoring requirements.

History of Violations

In 1984, Bonzi reported that its activities had resulted in a release of volatile organic compounds to groundwater. The Regional Board subsequently adopted Cease and Desist (C&D) Order No. 84-153, which directed the Discharger to evaluate the extent of the contaminant plume. Upon completion of that task, the Regional Board adopted Cleanup and Abatement (C&A) Order No. 89-185, requiring the installation and operation of a groundwater remediation system. While the Discharger installed a groundwater extraction and treatment system, Bonzi failed to operate it for at least one year, from March 2004 through March 2005. In addition, the Discharger has recently verified that the system is not adequate to contain the entire extent of the contaminant plume nor is it strong enough prevent groundwater from contacting the waste.

As evidenced by 17 Notice of Violations issued to the Discharger since January 2001, Bonzi has a long history of failing to address noncompliance issues, failing to operate its groundwater extraction system, and failing to submit adequate reports.

After site inspections in March and April 2005, staff prepared a Cease and Desist Order to address the numerous regulatory violations. Among other items, the C&D Order includes time schedules for Bonzi to: stop accepting non-permitted waste, repair the soil cover on the closed unit, repair the storm water conveyance system, complete final closure for the two inactive units, evaluate the adequacy of the groundwater detection and corrective action systems, establish a financial assurance fund, and continuously operate the groundwater extraction and treatment system. After many meetings and revisions by staff, the Discharger elected to accept the terms of the proposed C&D. The Regional Board subsequently adopted Order No. R5-2005-0073 as an uncontested item at its 29 April 2005 meeting. The C&D Order is contained in Attachment A to this staff report.

Stipulated Judgment

Following the adoption of C&D Order No. R5-2005-0073, the Discharger began submitting the required reports. However staff's review found that these submittals were incomplete and did not address the requirements of the C&D nor the applicable landfill regulations. Although the operator complied with a few aspects of the C&D, it did not comply with the majority of the requirements, as evidenced by the seven Notices of Violation that have been issued since the Order was adopted.

In September 2005, the Stanislaus County District Attorney and Regional Board staff began a joint enforcement action against the landfill. The District Attorney's complaint alleged that Bonzi has failed to comply with numerous requirements of the CDO, including failing to demonstrate that the groundwater detection and extraction system is adequate for site conditions and failing to post financial assurances for corrective action, closure, and post closure maintenance activities at the landfill. In addition, Bonzi has failed to provide a least one foot of interim soil cover on two of the landfill units and has allowed un-permitted waste to be deposited in the active unit. Of gravest concern to the neighbors living next to the landfill, the groundwater treatment and extraction system was not operated for a one-year period.

The parties agreed to a Stipulated Judgment, which was filed with the Superior Court of Stanislaus County on 23 December 2005. Terms of the stipulated judgment include:

- Payment of \$450,000 to the Stanislaus County District Attorney's Office and the State of California;
- Payment of \$1.4 million in penalties has been stayed contingent upon Bonzi's satisfactory completion of 21 studies and improvements to the landfill. These tasks must be completed by the timelines described in the judgment or Bonzi must pay the specific penalty associated with each task; and
- Payment of \$100,000 if Bonzi violates Penal Code Section 115 (regarding fraudulent reporting) at any time in the next three years.

The stipulated judgment does not relieve the landfill owners and operators from the need to comply with all aspects of their WDRs and the C&D Order, nor does it prohibit the Regional Board from taking additional enforcement actions for items not addressed in the judgment.

The Stipulated Judgment is found as Attachment B to this staff report. As stated above, \$1.4 million of penalties were stayed contingent upon the Discharger completing 21 reports and/or landfill improvements. This listing of tasks is contained in Exhibit A to the Stipulated Judgment. Many of the items were originally required by the C&D Order, or are violations found during staff's inspections during the summer of 2005. Exhibit B contains the specific stayed penalty for each task. In order for any of the stayed penalties to be assessed, the Regional Board must allow the Discharger an opportunity for a hearing before adopting a Resolution or Order describing the violation. Alternatively, a Superior Court Judge may find that the Dischargers have violated the Stipulated Judgment. Once a finding of violation has been made, the applicable stayed penalty (as described in Exhibit B) is immediately due and payable.

Item No. 11 of Exhibit A contains the requirement that "By 1 January 2006, the Discharger shall inspect the detention pond liner system and remove any vegetation from the pond...". Exhibit B states the penalty for violating this task is \$50,000. Ma-Ru Holding Company and the Bonzi Sanitation Landfill failed to complete Item No. 11 by 1 January 2006, and therefore staff are asking the Regional Board to adopt a Resolution finding a violation of the Stipulated Judgment and requiring the Discharger to immediately pay the \$50,000 penalty.

The remainder of this staff report discusses the issues surrounding the removal of vegetation from the pond and the inspection of the pond liner.

Removal of Vegetation and Inspection of Pond Liner

WDRs Order No. 90-215 regulates the discharge of treated groundwater and storm water to a lined detention pond, and the subsequent discharge to a vineyard. The WDRs require that the pond be maintained free of vegetation. This is a standard requirement, and is necessary to prevent nuisance conditions (i.e., mosquito breeding) and to ensure that the pond maintains the storage capacity it was designed for. In addition, the WDRs state that the pond will be lined with a synthetic liner, in part to comply with Section 20365 of Title 27, which states that waste management units must be protected from inundation by surface and ground water. Because the detention pond is immediately adjacent to a waste management unit, the liner is necessary to prevent excess water from percolating into the wastes.

Attachment C is a condensed chronology of the issues surrounding the detention pond liner inspection and vegetation removal events.

During an inspection in 2003, staff found that trees and other vegetation were growing in the pond and had probably punctured the liner system, in violation of the WDRs. A 16 October 2003 Notice of Violation (NOV) required Bonzi to make improvements and retain a Professional Engineer to certify that the pond does not leak. No effort was made by the Discharger to comply with this NOV.

Staff inspected the detention pond again in July 2005, and observed that trees and other vegetation were still growing in the pond. In August 2005, another NOV was written, stating that it appeared that the liner system had failed, and requiring Bonzi to submit a workplan to repair the liner. The plan was due by 30 August 2005, and was submitted on time. The Discharger stated that it planned

to dewater the pond by 12 September, remove the trees and shrubs, inspect the liner, make any necessary repairs, and certify the integrity of the liner by 16 December 2005.

Staff was concerned about the mechanics of draining the pond, and whether that would result in violation of the WDR flow rate. The pond was at capacity because Bonzi had not previously been irrigating the vineyard with the wastewater at the flow rate allowed in the WDRs. Staff's 9 September e-mail to the Discharger stated that if Bonzi began irrigating immediately at the allowed flow rate, then the pond could be emptied by 29 December. Several e-mails and letters were then exchanged evaluating different options and costs to drain the pond, and on 1 November 2005 staff stated that we would not propose enforcement action if the pond was drained at a rate much greater than the flow limit allowed in the WDRs, as long as all the wastewater remained on the vineyard and did not cause nuisance conditions. On 8 November 2005, Bonzi's consultant responded that they could drain the pond within 11 to 14 days. Therefore, staff expected that the pond would be drained, and vegetation removal activities begun, by the last week of November. In fact, on 28 November 2005 the Discharger notified staff that one foot of water remained in the surface impoundment, that the vegetation would be removed by 12 December, and the electronic leak detection survey would be done on that date.

In late October, staff spent three full days discussing the Terms and Conditions of the Stipulated Judgment with the Discharger and its attorneys. One of the Terms was the requirement that Bonzi remove the vegetation, complete an electronic leak detection test, and repair the detention pond liner. It was necessary to include this item in the Stipulated Judgment due to Bonzi's disregard of the October 2003 NOV and the delays in responding to the August 2005 NOV. Staff and the Discharger continued to negotiate and make minor changes to the Stipulated Judgment during November 2005; however, it should be pointed out that the Discharger did not request any changes to the content of Term related to the detention pond, nor to its due date or stipulated penalty. The Discharger signed the Stipulated Settlement on 15 December 2005.

On 12 December, staff inspected the detention pond, expecting to observe the electronic leak detection test. However, staff was told that the test was postponed, as the pond still contained significant amounts of vegetation. Staff again inspected the detention pond on 21 December 2005. While most of the leak detection survey had been completed, vegetation remained in the pond and the survey could not be finished until all the vegetation had been removed. During the visit, staff did not observe anyone working to remove the vegetation, and were informed by the Discharger that he would not be able to comply with the 1 January 2006 date in the Stipulated Judgment. On 27 December 2005, staff sent the Discharger an e-mail reminding him of the pending deadline and the penalty for noncompliance, and suggesting that it would be more cost-effective to hire extra workers to remove the vegetation than to pay the \$50,000 penalty.

The Discharger's attorney responded in a 27 December 2005 letter (Attachment D to this staff report) stating that the Discharger was making every effort to remove the vegetation but was hindered by rain, the pond pumping restrictions imposed by Regional Board staff, and the measures required to remove the vegetation without further damaging the liner. The letter states that the leak detection would be completed by the "week of January 9th" (apparently by 13 January 2006).

Staff would like to respond that the “pond pumping restrictions” were not imposed by staff but by the Discharger’s WDRs. If the Discharger had been pumping the pond onto the vineyard at a reasonable rate all summer, it would have been much lower and therefore easier to empty. With regard to violating the flow limit contained in the WDRs, it is standard practice to require a Discharger to demonstrate why it is infeasible to use some other method (in this case, hauling off the waste, storing the water in tanks, or discharging to the city sewer system) that will not result in a WDR violation. Once the Discharger made this demonstration, staff stated that it would not recommend enforcement for violations of the WDR flow limit as long as all the wastewater remained on the vineyard and nuisance conditions were not created.

Conclusion

The Discharger has neglected to conduct routine maintenance activities at its detention pond to prevent vegetation from growing within the pond. The roots from these plants have punctured the underlying liner, and are likely causing water quality impacts to the waste management unit and to the underlying groundwater.

The Discharger was notified per an October 2003 NOV that it was in violation of its WDRs, and was required to remove the vegetation and make repairs. However, Bonzi failed to respond to the NOV. The Discharger received a second NOV in August 2005 and was again required to make the improvements. While there was a delay in de-facto allowing the flow-rate violation of the WDRs, Bonzi could have started removing some of the vegetation while the pond was still draining. Once the pond was drained, the Discharger could have employed extra personnel to remove the remaining vegetation.

The Stipulated Judgment, which the Discharger signed in December, requires that the vegetation be removed and the pond liner inspected by 1 January 2006. It lists a penalty of \$50,000 for a violation of this particular Term.

The Bonzi Landfill has a long history of noncompliance and missing due dates. This proposed Resolution recognizes these compliance issues and even though the Discharger proposed to complete the pond liner inspection in January 2006, staff proposes the Stipulated Judgment be implemented as written and that the \$50,000 penalty be applied. There are many other dates and penalties (combined stayed penalties up to \$1,400,000) associated with this Judgment and the Discharger needs to be aware that Regional Board intends to enforce this Stipulated Judgment, as well as its own Orders. Staff recommend that the Board adopt the proposed Resolution.

Attachments:

- A: CDO No. R5-2005-0073
- B: Stipulated Judgment (Case No. 376882)
- C: Chronology of the detention pond liner inspection and vegetation removal events
- D: 29 December 2005 letter from Strauss, Neibauer & Anderson